

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

SCOTT M. GAIB

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CASE NO. 2:10 CR 167 (1)
JUDGE FROST

PLEA AGREEMENT

The United States Attorney for the Southern District of Ohio and the defendant, SCOTT M. GAIB, hereby enter into the following Plea Agreement pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure:

1. Defendant SCOTT M. GAIB will enter a plea of guilty to Count 1 of an Indictment returned herein which charges him with conspiracy to commit bank fraud and wire fraud offenses, in violation of 18 U.S.C. § 371.
2. Defendant SCOTT M. GAIB understands that the maximum penalty that may be imposed pursuant to his plea of guilty to Count 1 is a term of imprisonment of not more than five (5) years; a fine of not more than \$250,000, or twice the value of the property involved in the transactions, whichever is greater; restitution to the victims of his crimes; and up to 3 years of supervised release.
3. Defendant SCOTT M. GAIB also will enter a plea of guilty to Count 11 of the Indictment which charges him with money laundering, in violation of 18 U.S.C. § 1957.

4. Defendant SCOTT M. GAIB understands that the maximum penalty that may be imposed pursuant to his plea of guilty to Count 11 is a term of imprisonment of not more than ten (10) years; a fine of not more than \$250,000; restitution to the victims of his crime; and up to 3 years of supervised release.

5. Defendant SCOTT M. GAIB further understands that sentences of imprisonment may be imposed on each count, and that he may be required to serve such sentences consecutively, that is, one after the other.

6. Defendant SCOTT M. GAIB, will pay a special assessment of \$100 on each count for which a guilty plea is accepted, for a total of \$200, as required in 18 U.S.C. § 3013. This assessment shall be paid by defendant before sentence is imposed and defendant will furnish a receipt at sentencing. The payment shall be made to the United States District Court, at the Clerk's Office, 85 Marconi Boulevard, Columbus, Ohio 43215.

7. Defendant SCOTT M. GAIB further understands that he has the following rights, among others:

- a. To be represented by an attorney at every stage of the proceeding, and that, if necessary, one will be appointed to represent him;
- b. To plead not guilty and to be tried by a jury;
- c. To be assisted by counsel during such trial;
- d. To confront and cross-examine adverse witnesses;
- e. To use compulsory process to summon witnesses for the defense;
- f. Not to be compelled to testify; and

g. To be presumed innocent throughout trial until and unless found guilty by a jury beyond a reasonable doubt.

8. Defendant SCOTT M. GAIB understands that if his pleas of guilty to Counts 1 and 11 are accepted by the Court there will not be a further trial of any kind, so that by pleading guilty he waives, or gives up, his right to a trial.

9. Defendant SCOTT M. GAIB understands that the Court intends to question him on the record about the offense to which he pleads guilty, which questioning may be under oath and which could provide a basis for a later prosecution of this defendant for perjury or false statements if he does not tell the truth.

10. Defendant SCOTT M. GAIB agrees to testify truthfully and completely concerning all matters pertaining to the Indictment returned herein and to any and all other real estate mortgage-related frauds occurring in the Southern District of Ohio in which he may have been involved or as to which he may have knowledge. Defendant further agrees to provide a complete statement to authorities of the United States concerning such matters prior to sentencing or at any other time that may be requested by the United States Attorney or a federal, state or local investigative agency. Defendant agrees to submit to supplemental debriefings on such matters whenever requested by federal, state or local authorities.

Pursuant to §1B1.8 of the United States Sentencing Guidelines (“Guidelines”), the government agrees that any self-incriminating information so provided will not be used against the defendant in determining the applicable Guidelines range for sentencing, or as a basis for upward departure from the advisory Guidelines range.

11. If such pleas of guilty to Counts 1 and 11 of the Indictment are entered and not withdrawn and this defendant acts in accordance with all other terms of this agreement, the United States Attorney for the Southern District of Ohio agrees to seek dismissal at sentencing of Counts 2 - 10 and 12, and not to pursue any further criminal charges either arising from the circumstances set forth in the Indictment or any other real estate mortgage-related frauds occurring during the years 2005, 2006 and 2007.

12. Understanding that the following agreements under the advisory Guidelines cannot bind the Probation Department or the Court, the United States of Attorney for the Southern District of Ohio and Defendant SCOTT M. GAIB, the parties to this Plea Agreement, hereby make the following agreements under the advisory Guidelines:

a. The parties agree that Part B of Chapter Two of the Guidelines is appropriate for determination of Defendant SCOTT M. GAIB's offense level for Counts 1 and 11 taken together. The parties agree that the loss therein is based upon bank and wire frauds related to real estate at 638 Covered Bridge Drive, 4918 Augusta Woods Court, 7267 Macbeth Drive, 1450 East Broad Street, 1355 Bryden Road and 794 Riverbend Avenue, and that the losses experienced with respect to all six of these properties constitute this defendant's relevant conduct as the term is applied under the Guidelines and for the computation of both the amount of loss and total restitution for SCOTT M. GAIB which is based upon the readily provable evidence in this case, and which corresponds to an offense level of **22** under Guidelines § 2B1.1.

b. The parties expressly do not agree regarding Defendant SCOTT M. GAIB's role in the offense under §§ 3B1.1 or 3B1.2 of the Guidelines.

c. The parties agree that pursuant to § 3E1.1(a) of the Guidelines, at the time of his pleas, the defendant, SCOTT M. GAIB, has accepted responsibility for the offenses and therefore is entitled to a two-level reduction in the applicable base offense level under this section of the Sentencing Guidelines. The parties further agree that this defendant has timely notified the United States as to his intention to plead guilty and therefore may be entitled to an additional one-point reduction to his offense level under Guideline § 3E1.1(b).

d. The parties agree that other than those mentioned in a., b. and c., above, no further upward or downward departure points, or levels, should be applicable to this defendant under the Guidelines.

13. The United States Attorney for the Southern District of Ohio agrees that if Defendant SCOTT M. GAIB provides substantial assistance in the investigation or prosecution of others who have committed criminal offenses, the United States Attorney may move the Court pursuant to 18 U.S.C. § 3553(e) and/or § 5K1.1 of the Guidelines for an appropriate departure from the otherwise applicable Guidelines range for Defendant's sentence and will in connection therewith make known to the Court the nature and extent of Defendant's assistance. Defendant understands that whether such motion should be made lies within the discretion of the United States Attorney and that whether and to what extent such motion should be granted are solely matters for determination by the Court.

14. The defendant, SCOTT M. GAIB, is aware that, in light of *United States v. Booker*, 125 S.Ct. 738 (2005), the Guidelines are advisory and are not mandatory, and that the Court otherwise is required to impose a sentence consistent with the factors set forth at 18 U.S.C. § 3553(a). The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set forth for the offenses to which the defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence. The defendant is further aware that any estimate of a probable sentencing range that the defendant may have received, or may receive in the future, from his counsel, the United States, or the probation office is a prediction, not a promise, and is not binding on the United States, the Probation Department or the Court. The United States makes no promise or representation concerning the sentence

that the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

15. By virtue of his pleas of guilty to Counts 1 and 11 of the Indictment, this defendant understands that he is not a prevailing party as defined by 18 U.S.C. § 3006A and hereby expressly waives his right to sue the United States.

16. No additional promises, agreements, or conditions have been made relative to this matter other than those expressly set forth herein, and none will be made unless in writing and signed by all parties.

9/3/10

(Date)



SCOTT M. GAIB

Defendant



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